

Supreme Court of U. S.

DEC 26 1978

MICHAEL RYAN, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-91

R. W. JONES, SR., et al.,
Petitioners,

VS.

CHARLES T. WOLF, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA

BRIEF FOR RESPONDENTS

FRANK C. JONES
GEORGE M. KRYDER, III

2500 Trust Company Tower
Atlanta, Georgia 30303

WALLACE MILLER, JR.
W. WARREN PLOWDEN, JR.

500 First National Bank Building
Macon, Georgia 31201

EDWARD S. SELL, JR.
1414 Georgia Power Building
P. O. Box 1014
Macon, Georgia 31201
Attorneys for Respondents

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OPINIONS BELOW

The opinion of the Georgia Supreme Court is reported at 241 Ga. 208, 243 S.E.2d 860 (1978) and is reprinted in the Appendix to the Petition for a Writ of Certiorari (P.A.) at 11a-16a. The unreported opinion of the Superior Court of Bibb County, Georgia is reprinted at P.A. 1a-10a.

JURISDICTION

The Georgia Supreme Court entered judgment in this Action on April 4, 1978 and denied a Petition for Rehearing on April 19, 1978. This Court granted certiorari on October 10, 1978. Jurisdiction rests on 28 U.S.C. §1257(3).

QUESTION PRESENTED

In a dispute confined to the use and control of real property owned by a local church where no religious questions are raised or decided by a state court, is the state court nevertheless constitutionally required to defer to the ruling of a general church administrative commission as to the control and use of the property?

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. CONST., Amend. I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof
* * *.

U.S. CONST., Amend. XIV, Sec. 1:

* * * nor shall any State deprive any person of life, liberty, or property, without due process of law * * *.

STATEMENT OF THE CASE

This is a dispute concerning the use and control of real estate owned by Vineville Presbyterian Church [hereinafter VPC], in Macon, Georgia.

On May 27, 1973, the VPC congregation adopted a resolution¹ separating the church and its property from continued affiliation with the Presbyterian Church in the United States [hereinafter PCUS], one of several Presbyterian denominations in this country. The majority, represented in this Court by respondents,² immediately notified PCUS of the action and subsequently became united with another Presbyterian denomination which has no affiliation with PCUS. J.A. 318. Respondents have at all times since their withdrawal from PCUS retained possession and control of the property and assets of VPC.

1. J.A. 228. The resolution provided in part:

WHEREAS: The Congregation of the Vineville Presbyterian Church, Inc. desires to separate with our property, real, chattels, and intangibles from Augusta-Macon Presbytery and the Presbyterian Church in the United States so as to become and constitute itself an independent church, and

WHEREAS: Such exercise of freedom is guaranteed by the First and Fourteenth Amendments to the Constitution of the United States of America,

NOW THEREFORE, BE IT RESOLVED that the Vineville Presbyterian Church, Inc. does now declare itself to be an independent and self-governing church.

BE IT FURTHER RESOLVED that any and all connections, control, jurisdiction, and/or oversight of said Augusta-Macon Presbytery and any other judicatory or commission of the Presbyterian Church in the United States with the Vineville Presbyterian Church, Inc., be and the same hereby are severed and dissolved.

AND BE IT FURTHER RESOLVED that all matters concerning the Vineville Presbyterian Church, Inc., both spiritual and secular, shall be determined by the local Church Congregation and shall be carried out through its duly elected officers.

The congregation adopted the resolution by a vote of 165 to 94. Neither the minutes of the congregational meeting nor the resolution itself indicated any reasons, religious or otherwise, for the proposal. It is undisputed that the meeting of the congregation was validly called and conducted. See note 4, *infra*.

2. Respondents include the majority members of the congregation, the majority members of the Session, the pastor and two of the three trustees.

Following adoption of the resolution, petitioners³ ceased participation in the affairs of VPC and have conducted their church activities at various other locations in Macon. They have been refused the privilege of using the VPC premises as an adjunct of PCUS, but not otherwise. J.A. 318. Indeed, petitioners' names were not dropped from the VPC church roll until June 3, 1976, over three years after they had ceased functioning as part of the congregation and two years after this litigation was commenced. J.A. 327.

Although the resolution of the congregation was adopted by a majority vote in conformity with the PCUS Book of Church Order⁴ and was not prohibited by that document,⁵ PCUS nevertheless appointed an administrative commission which issued an *ex parte* "ruling, order and judgment," J.A. 5, declaring that petitioners were the true congregation of VPC and withdrawing from respondents all authority derived from PCUS.⁶ The commission further purported to declare that respondents had forfeited all their rights to VPC property. J.A. 5, 235.

3. Petitioners, adherents of PCUS, include three named individuals who now claim to be the trustees of VPC by virtue of action taken by petitioners some four months after the resolution of separation was adopted. The trial court ruled that the designation of these persons as trustees was ineffective insofar as this property dispute is concerned. P.A. 9a.

4. The PCUS Book of Church Order, 14th Printing (1972), was in effect at the time this controversy arose. Section 5-6 of the Book of Church Order provides for the adoption of resolutions at congregational meetings by a majority vote. J.A. 35.

5. At the time of this controversy, the Book of Church Order contained no prohibition against the withdrawal of a congregation without the approval of PCUS, although such a provision was added to the Book of Church Order subsequent to the withdrawal of VPC and numerous other local churches. The Book of Church Order, 15th Printing (1975), Section 4-2, J.A. 329.

6. Respondents had separated from PCUS prior to the appointment of the commission, did not participate in the commission proceeding, and, of course, did not "appeal."

Thereafter, petitioners filed a federal action which was dismissed for lack of federal jurisdiction. The United States Court of Appeals for the Fifth Circuit affirmed the dismissal and this Court denied certiorari. *Lucas v. Hope*, 515 F.2d 234 (5th Cir.), *rehearing denied*, 523 F.2d 1055 (5th Cir. 1975), *cert. denied*, 424 U.S. 967 (1976).

Subsequently, petitioners brought this action seeking a declaratory adjudication of their rights to the VPC premises and a permanent injunction preventing respondents from continuing to use this property in any manner other than as a unit of PCUS. Neither PCUS nor the Augusta-Macon Presbytery were parties to this action.⁷

The case was submitted on briefs and stipulated facts and was decided by the trial court without a jury. Petitioners asserted that they were the true trustees;⁸ that they represented the true congregation as decreed by the PCUS commission; and that respondents were acting unlawfully in continuing to maintain possession and control of the church property to the exclusion of petitioners. Respondents contended that they had a right to withdraw from PCUS upon appropriate resolution of the congregation; that the PCUS commission had no authority over the VPC property⁹ nor authority to name any of the

7. However, since petitioners' case is based solely on the *ex parte* ruling of the PCUS administrative commission, the issue before the Court is exactly the same as it would be if PCUS were the party plaintiff. This is in actuality a controversy between a general church (PCUS) as represented by petitioners, and a local church (VPC), as represented by respondents.

8. See note 3, *supra*.

9. Respondents never have denied the authority of PCUS to recognize any person or group it may choose as being in communion and fellowship with it and thus its "true congregation." The identity of the "true congregation" has never been an issue in this case. Respondents do challenge the authority of PCUS to control and divert the use of local church property. See Section III, *infra*.

petitioners as trustees of VPC; and that respondents were lawfully in possession of the church property.

The trial court initially recognized the holding of this Court that there are neutral principles of law, applicable to all property disputes, which can be applied in resolving church property litigation without determining controversies over religious doctrine. *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449 (1968) [hereinafter *Hull*]. The court then reviewed the neutral principles applied by the Georgia Supreme Court in *Carnes v. Smith*, 236 Ga. 30, 222 S.E.2d 322, cert. denied, 429 U.S. 868 (1976) [hereinafter *Carnes*]. *Carnes* had adopted the neutral principles/formal title doctrine articulated by this Court in *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, 249 Md. 650, 241 A.2d 691 (1968), vacated and remanded, 393 U.S. 528, reaffirmed, 254 Md. 162, 254 A.2d 162 (1969), appeal dismissed, 396 U.S. 367 (1970) [hereinafter *Sharpsburg*]. In *Sharpsburg*, this Court sanctioned the examination of deeds, state statutes regarding religious corporations, church corporate charters, and provisions in church constitutions, as neutral principles of law which may be considered by civil courts without impermissibly intruding into doctrinal matters.

Utilizing the *Sharpsburg* neutral principles/formal title approach, the trial court first reviewed the history of title acquisition¹⁰ by VPC to determine whether PCUS

10. The real estate which is the subject of this controversy was acquired by VPC in three tracts. The first of these was a conveyance in 1908 to P. S. Lowrey and J. T. Kinnett as trustees of VPC. J.A. 247. On April 29, 1915, the church was incorporated, J.A. 271, and this property subsequently was quit-claimed to the church corporation by the trustees. J.A. 249. The second

(Continued on following page)

had any enforceable property rights in the assets of VPC. The court concluded that there was nothing in the deeds, the applicable Georgia statutes regarding corporations,¹¹ the VPC corporate charter,¹² or the PCUS Book of Church Order to indicate any express or implied trust in favor of any group other than the local congregation of VPC. The court thus held that petitioners were not entitled to the relief requested and dismissed the complaint.

On appeal to the Georgia Supreme Court, petitioners argued that since they had remained loyal to PCUS, they automatically were entitled to the VPC property. *Jones v. Wolf*, 241 Ga. 208, 243 S.E.2d 860, 863 (1978). The Georgia Supreme Court rejected this sweeping contention,

Footnote continued—

parcel was acquired from A. E. Barnes, III, in 1956, J.A. 251, and the third from the Bateman family in 1960. J.A. 253, 256, 261, 264, 268. Both of these tracts were conveyed to trustees rather than to the church corporation. The corporation, however, was included in the Stipulation and the parties agreed that it would be bound by the outcome of these proceedings. There is no language in any of these deeds which creates a trust in favor of PCUS or any group selected or recognized by it. Similarly, there is no language providing that the property will revert to PCUS or a group recognized by it if the congregation attempts to withdraw from the denomination.

On six occasions over the years, VPC found it necessary to borrow money and conveyed title to its property as security for the repayment of these loans. J.A. 278, 282, 286, 294, 299, 306. Three of these instruments indicate that the security deed was being given pursuant to authority set forth in resolutions adopted by the congregational meetings of VPC. All of these deeds were executed by trustees. There is no mention of the Presbytery or other body in PCUS, or that PCUS had knowledge of, approved of, or had anything to do with these loans. Unlike at least one other Presbyterian denomination, J.A. 331, 334, there is no requirement in the PCUS Book of Church Order that the local church have the permission of a Presbytery to sell or mortgage its property.

11. See GA. CODE ANN. §§ 22-5507, 22-5508.

12. The charter, which was issued in 1915, entitled VPC to hold and own property in its own name without involvement by PCUS. J.A. 271.

stating that a general church such as PCUS must have more than "a mere connectional relationship" with the local congregation in order to acquire rights in the local church property. *Id.* The court opined that petitioners' argument sought a return to the implied trust theory previously rejected in *Presbyterian Church in the United States v. Eastern Heights Presbyterian Church*, 225 Ga. 259, 167 S.E.2d 658 (1969), cert. denied, 396 U.S. 1041 (1970)¹³ and was simply an effort to persuade the court to abandon the neutral principles enunciated in *Carnes*, 222 S.E.2d 322.

The court next examined the applicable deeds, the VPC corporation charter, Georgia statutes,¹⁴ and the PCUS Book of Church Order to determine whether PCUS had rights in the VPC property. Finding that PCUS had no interest in the VPC property and that the trial court properly had applied the neutral principles/formal title

13. The *Eastern Heights* case was on remand from the decision of this Court in *Hull*, 393 U.S. 440.

14. The Court stated that:

"Appellants rely heavily on CODE ANN. §§ 22-5507 and 22-5508 which mandate that property conveyed to a church is vested according to the mode of church government or such rules of discipline exercised by such churches or religious societies respectively, and upon *Carnes*, which held that 'The statutes thus mandate that the church property be held according to the terms of the church government.' 236 Ga. at 38, 222 S.E.2d at 328. However, those statutes do not purport to give a general church any rights in local church property other than those rights set forth in the documents of church government. The *Book of Church Order*, Chapter 6, entitled 'Incorporation and Property of a Particular Church,' Sections 6-1, 6-2 and 6-3, fails to give rise to an express trust or any implied trust as defined by the General Assembly. Section 6-2, dealing with incorporated churches within the Presbytery, specifically provides that a church corporation may elect officers to hold and manage local church property and may buy, sell and mortgage such property under the authority and direction of such corporation, the membership of which includes every member of the congregation." 241 S.E.2d at 863.

approach of *Sharpsburg*, 396 U.S. 367, and *Carnes*, 222 S.E.2d 322, the Georgia Supreme Court held that petitioners were not entitled to the relief requested.

SUMMARY OF ARGUMENT

The identity of the "true congregation" recognized by PCUS has absolutely nothing to do with the resolution of this dispute. Rather, the issue is simply the pre-existing relationship between VPC and PCUS and the powers, if any, which PCUS had with respect to the local church property.

The Georgia courts concluded that PCUS had no rights in the VPC property by applying neutral principles of law and the formal title doctrine and reached this conclusion without the consideration of religious doctrine or church polity and without rejecting, ignoring or overruling the decision of any ecclesiastical tribunal thereupon. No such issues were in dispute.

No decision of this Court mandates that a state must defer to the ruling of ecclesiastical tribunals regarding the right to possess and use real estate. Nor has this Court conditioned the application of the neutral principles approach upon the absence of a ruling by an ecclesiastical tribunal.

First Amendment values would clearly be jeopardized and freedom of religion would be inhibited by the adoption of the position espoused by petitioners.

ARGUMENT

I.

THE GEORGIA SUPREME COURT HAD VALIDLY ADOPTED THE NEUTRAL PRINCIPLES/FORMAL TITLE APPROACH IN CARNES V. SMITH, BEFORE CONSIDERING THE INSTANT CASE.

- A. Civil courts may decide church property disputes employing any one of various approaches, so long as there is no consideration of doctrinal matters.**

In *Hull*, 393 U.S. 440, 449, this Court held that "there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded." Subsequently, in a concurring opinion in *Sharpsburg*, 396 U.S. 367, 368-70, Mr. Justice Brennan stated that the "neutral principles" concept enunciated in *Hull* was merely one of at least three alternative approaches for settling church property disputes and explained that:

"A state may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith (emphasis in original)." 396 U.S. at 368.

The three approaches enunciated by Justice Brennan are: the deference approach of *Watson v. Jones*, 80 U.S. (13

Wall.) 679 (1872);¹⁵ a statutory approach;¹⁶ and the neutral principles/formal title doctrine. With respect to the latter approach, Justice Brennan stated that:

" '[N]eutral principles of law, developed for use in all property disputes,' [Hull] *supra*, at 449, provide another means for resolving litigation over religious property. Under the formal title doctrine, civil courts can determine ownership by studying deeds, reverter clauses, and general state corporation laws. Again, however, general principles of property law may not be relied upon if their application requires the civil courts to resolves doctrinal issues." 396 U.S. at 370.

- B. Georgia has adopted the neutral principles/formal title approach.**

Following this Court's reversal and remand in *Hull*, 393 U.S. 440, the Georgia Supreme Court eliminated the implied trust or deference approach as a means of resolving disputes over local church property in Georgia. *Presbyterian Church in the United States v. Eastern Heights Presbyterian Church*, 225 Ga. 259, 167 S.E.2d 658 (1969), cert. denied, 396 U.S. 1041 (1970). The court observed that the applicable deeds placed title in the local churches and found that there was no basis for a trust in favor of the general church, PCUS. Accordingly, the court rendered judgment in favor of "the respective local

15. Under the implied trust rule of *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872), states may enforce the property decisions made within a church of hierarchical polity by the highest authority that has ruled on the dispute at issue. 396 U.S. at 368-70. See note 24, *infra*, and accompanying text.

16. The *Sharpsburg* Court noted that a second alternative is "the passage of special statutes governing church property arrangements in a manner that precludes state interference in doctrine." 396 U.S. at 370.

churches."¹⁷ When again faced with a church property dispute in *Carnes v. Smith*, 236 Ga. 30, 222 S.E.2d 322, cert. denied, 429 U.S. 868 (1976), the Georgia Supreme Court adopted the neutral principles/formal title approach which this Court sanctioned in *Sharpsburg*, 396 U.S. 367, 370.¹⁸

Carnes involved a dispute over local church property in the United Methodist Church. The local congregation

17. In *Hull*, the adverse parties were PCUS and the chairman of its administrative commission, rather than members of the minority faction of a local congregation. The relief sought, however, was identical to that requested here—PCUS wanted injunctive relief and a declaration that the property was to be held for the use and benefit of adherents of the general church. 224 Ga. at 65. In *Hull*, the commission and its chairman occupied positions identical to those of petitioners here. In its resolution, the commission noted that the local churches and ministers had withdrawn from the general church and that there was only one ruling elder left in each of the churches who did not agree with this action. However, rather than finding that these elders and any members who agreed with them were the "true congregations," the commission assumed original jurisdiction over the congregations and stated that it would undertake to provide services for those members who wished to continue in communion with the general church. *Id.* at 62-64. Even though the facts vary slightly, the thrust of the action of PCUS in both cases is the same. It undertakes to have its commission issue a ruling as to who is entitled to use the property of a local church and then seeks to have a civil court enforce that judgment under the deference theory.

18. *Sharpsburg* was pending before the Court at the time of the *Hull* decision and was remanded for reconsideration in light of that ruling. The Maryland Court of Appeals reviewed its previous decision, which is reported at 249 A.2d 691, and held that it had anticipated *Hull*, and that its ruling was in complete accord with the First Amendment principles announced in that case. 254 A.2d 162. Plaintiffs again appealed, contending that the result contravened First Amendment principles. This Court dismissed for want of a substantial federal question. Votes to dismiss for lack of a substantial federal question are votes on the merits of a case. *Hicks v. Miranda*, 422 U.S. 345 (1975). While such votes do not necessarily embrace the reasoning and analysis employed in the court below, they do "without doubt reject the specific (federal) challenges presented in the statement of jurisdiction and . . . leave undisturbed the judgment appealed from." *Mandel v. Bradley*, 432 U.S. 173, 176 (1977).

refused to allow the use of its property as part of the United Methodist Church. The Georgia Supreme Court affirmed an injunction for the general church.

After noting its elimination of the deference approach in *Hull*, the *Carnes* court reviewed the *Sharpsburg* decisions and concluded that the criteria set forth therein were instructive as to what neutral principles of law might appropriately be considered. It reviewed the language of the deeds, the appropriate Georgia statutes and the general church constitution. Since the Discipline of the church required that all property be held in trust for the local church and the general church, the court concluded that the necessary factors were present to award the use of the property to the general church and its representatives.

II.

THE NEUTRAL PRINCIPLES/FORMAL TITLE APPROACH WAS APPLIED PROPERLY IN THE INSTANT CASE.

The Georgia Supreme Court applied the neutral principles/formal title approach in the present case and completely avoided the resolution of any underlying issues of religious doctrine or polity. The court examined the deeds, the VPC corporate charter, the Georgia statutes dealing with property held by religious organizations, and the provisions in the PCUS constitution concerning local church property. Finally, the court held that the mere connectional relationship between VPC and PCUS was not sufficient to empower PCUS to control the use and direction of this property and that there was no other had resolved to withdraw from the general church and

basis upon which such control could rest.¹⁹ This result is completely in accord with *Carnes*,²⁰ which in turn is based upon one of the approved formulas articulated in the *Sharpsburg* litigation. None of the constitutional limits delineated by this Court were transgressed in the process.

III.

THE GEORGIA COURTS WERE NOT REQUIRED TO DEFER TO THE DECISION OF THE PCUS COMMISSION WHICH HAD NO AUTHORITY OVER THE VPC PROPERTY.

No decision of this Court has held that a state court is constitutionally bound to defer to church tribunals which issue judgments determining the right to use and control real estate. A denomination can, by means of a church adjudication process, recognize or designate any person or group it so desires as being in affiliation with and loyal to the denomination. PCUS has done so in this dispute and clearly recognizes petitioners as its local adherents. Respondents just as clearly have withdrawn from PCUS and are no longer in communion with or loyal to that denomination. No one disputes these facts with

19. Although not stated in these terms, its holding constitutes a finding that the "substance" as opposed to the form of the connectional structure in the PCUS did not contain any neutral principles upon which a civil court could rely to sanction control by the denomination. Of course, the PCUS could create such principles as have other denominations. In the absence of such action by the denomination, however, the court is saying that it will not create a means by which the denomination can control local church property.

20. Petitioners ignore *Carnes*. This is not surprising, however, in that the Georgia courts held in that case that the general church had the right to control the direction and use of local church property and enjoined any interference with that use by persons who had withdrawn from the denomination.

regard to the status of the two local factions vis-a-vis PCUS.

These facts, however, were totally irrelevant to the determination of the issues before the courts below. Findings by a church tribunal that, under the law and ecclesiastical customs of a denomination, one of two local factions is the so-called "true congregation" typically do not stop at that point. They invariably go further as did the PCUS commission in this case and undertake to adjudicate property rights in the guise of making "ecclesiastical" decisions.²¹ Certainly the First Amendment does not require civil courts to become rubber stamp enforcers of such contrived ecclesiastical decisions. Such an outcome would exalt form over substance and would empower religious denominations to create and alter property rights.

Petitioners vigorously contend that this Court's decision in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976) [hereinafter *Serbian*], requires such an outcome. It does not. There were no competing factions of a local congregation present in the *Serbian* case. The only property involved was a monastery operated by the denomination.²² The litigants on both sides claimed

21. The commission in this case not only recorded the irregularity of the withdrawing members and the pastor, and declared petitioners to be the true congregation, but it then undertook to forfeit "all rights to the property of the congregation" for those who had withdrawn. J.A. 235-36. Similarly, in *Sharpsburg* the "judgment" of the General Eldership recognized the loyal adherents as the true congregation and found that those who had withdrawn had "abandoned and forfeited all . . . properties . . . in the local church and in the Churches of God." 241 A.2d at 694.

22. The property consisted of thirty acres in Libertyville, Illinois. Two corporations were involved. The first was an Illinois religious corporation known as the Serbian Eastern Orthodox Diocese for the United States of America and Canada (the "diocesan corporation"). The second was an Illinois not-for-profit

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to be the true bishop and ruling authority of the diocese. One based his contention on having been regularly appointed bishop and an allegedly illegal attempt to remove him by the church authorities in Belgrade. The other claimed to have been regularly appointed to succeed his defrocked opponent. Therefore, this Court characterized the case as involving "not a church property dispute but a religious dispute the resolution of which under our cases is for ecclesiastical and not civil tribunals." 426 U.S. 696, 709. It held that a civil court cannot undertake to determine whether the highest church tribunal has complied with its own rules and regulations concerning the removal of a bishop, but simply must accept whatever final decision has been rendered.

The clearly ecclesiastical decision designating the true bishop in *Serbian* passed control over the church property to that designee. However, this control over the property did not arise and the ability of the hierarchy to direct and change the individuals who exercised this control did not come about merely because the church employed the connectional or hierarchical form of church organization. It resulted instead because the corporations which held

Footnote continued—

corporation which was organized by the diocesan corporation and which was known as the Serbian Orthodox Monastery of Saint Sava (the "monastery corporation"). Legal title to the property was held by the monastery corporation. The constitution of the diocesan corporation provided that the "Diocesan bishop is the supreme head of the Saint Sava Monastery in Libertyville and that he appoints the abbot of the monastery and 'conducts the canonical supervision and the higher executive authority over the monastery.'" 219 N.E.2d 343, 347. The by-laws of the monastery corporation provided that the Diocesan bishop was the supreme head of the monastery and president of the board of directors. *Id.* at 343, 348.

There was absolutely no question as to the "substance" of the hierarchical polity as far as this property was concerned. The organic documents clearly placed it under the control of whoever happened to be the diocesan bishop.

title to the property originally were organized so as to effectuate such control.

The situation in this case is entirely different. When the schism arose, VPC was a local unit of PCUS. At the same time, however, it was a separate, local, legal entity with its own corporate existence which operated a church at 2193 Vineville Avenue in Macon, Georgia. It enjoyed the right to and did, acquire, hold and own property, and was recognized as being entitled to dispose of its property in its own name without reliance upon or necessity of action or acquiescence by PCUS. It was not, as petitioners would have the Court believe, a mere appendage of PCUS which relied upon the denomination for its very existence. The charter of VPC does not give a denominational representative supervision of the corporation or make him president of the board of trustees. The PCUS constitution does not make such a representative the supreme head of the local congregation. Quite to the contrary, it lodges control of local church property solely in the hands of the local congregation.

Apart from their so-called status as the "true congregation" of the denomination, petitioners have no legally cognizable claims upon the use of the VPC property. Without such a relationship, they are merely the minority faction of a voluntary association and thus have no entitlements. Therefore, their claims to the property depend entirely upon whether there is some incident or right of control vested in PCUS which can be conferred upon petitioners by recognizing them as the true congregation. In *Serbian*, the organization of the diocese and its corporations was such that whoever was bishop had control. There is absolutely nothing analogous to that situation here.

Moreover, there is nothing in *Serbian* or any other opinion of this Court which requires civil courts to create

means for a denomination to control local church property in the name of preserving a hierarchical church. If a church has taken the necessary steps to insure such denominational control as the Serbian church did, the Georgia courts will enforce such control in precisely the same fashion as they did in *Carnes*. Otherwise, they will not.

Likewise, there is nothing in *Watson v. Jones*, 80 U.S. (13 Wall.) 679, to support petitioners' claims that the First Amendment requires deference to church court decisions determining who can control and use local church property. In *Watson* the question was which of two factions was entitled to possession and use of local church property following a schism not only in the local church, but in the presbytery, the synod and the general assembly. The issue was first litigated in a Kentucky state court prior to the final schism and turned upon the identification of the true officers of the congregation. The Kentucky court did not defer to the decision of the highest tribunal in the church but apparently followed the English view and undertook to make such a determination on its own.²³

After the schism was complete, the losers in the state action filed a diversity case in federal court seeking a declaration that they were entitled to the use and control of the property. The court determined that the state lit-

23. This Court stated that:

"Under cover of inquiries into the jurisdiction of the synod and presbytery over the congregation, and of the General Assembly over all, it went into an elaborate examination of the principles of the Presbyterian church government, and ended by overruling the decision of the highest judicatory of that church in the United States, both on the jurisdiction and the merits; and, substituting its own judgment for that of the ecclesiastical court, decides that ruling elders, declared to be such by that tribunal, are not such, and must not be recognized by the congregation, though four-fifths of its members believe in the judgment of the assembly and desired to conform to its decree." 80 U.S. (13 Wall.) at 734.

gation was not a bar to the second proceeding and ruled for the plaintiffs on the merits. This Court affirmed.

This Court examined the general law on the subject of property held by churches and, relying on state court decisions, described three general common law property rules for resolving such disputes. The third of these rules governed disputes arising in a connectional denomination. In such a case, the existing religious congregation or its regular and legitimate successor is entitled to the use of the property. A civil court makes such a determination by ascertaining which group is recognized by the general church judicatory as the regular and legitimate successor and by deferring to that finding. This rule is said to be supported by the weight of judicial authority and to be founded in a broad and sound view of the relations between church and state in this country.²⁴

The rule actually applied in *Watson* was not of constitutional dimensions.²⁵ It was a common law property rule, which as later noted in *Sharpsburg*, is one of at least three permissible methods of resolving church property disputes which do not impinge on First Amendment values. On the other hand, the rationale of the *Watson* court for rejecting the English solution was converted into

24. The *Watson* Court then noted that the English view which had prevailed in the state court litigation was different. The English view awards the use of the property to the faction which a civil court finds is adhering to the original tenets of faith and practice of the denomination rather than deferring to the denomination's own identification of the successor organization. While this sort of rule might be appropriate in England which has an established church, it simply is not compatible with the full and free right enjoyed in this country to embrace any religious belief which does not violate the laws of morality and property. 80 U.S. (13 Wall.) at 727-29.

25. "The opinion itself, however, did not turn on either the establishment or the prohibition of the free exercise of religion." *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 110 (1952).

a constitutional rule²⁶ in *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94 (1952), when the Court held that the free exercise clause of the First Amendment, as applied to the states through the Fourteenth Amendment, prohibits states from interfering with the selection of clergy by a church and from passing laws which displace one church administrator for another in disregard of the rulings of a church tribunal in the matter.

This Court also applied the rationale of the *Watson* court when it actually was faced with an application of the English view in *Hull*, 393 U.S. 440, by holding that the First Amendment does not permit church property disputes to turn upon the resolution by civil courts of controversies over religious doctrine and practice. It did not, as petitioners suggest, command that the First Amendment allows only the use of the property rule laid down in *Watson*, or that it allows a court to deviate from that rule only if there is no ruling by an ecclesiastical court.

In fact, the Court stated that "there are neutral principles of law, developed for use in all property disputes which can be applied without 'establishing' churches to which property is awarded." 393 U.S. 440, 449. Moreover, as petitioners concede, the Court took the occasion during the following term "to demonstrate and approve the appropriate application of 'neutral principles of law' to a church property dispute"²⁷ in the *Sharpsburg* litigation.

The material facts in *Sharpsburg* are simply indistinguishable from the facts in the case at bar. To the extent that any federal question is actually before the court in

26. See *Hull*, 393 U.S. 440, 449.

27. Petitioners' brief, at 20 (emphasis added).

this case, it is absolutely controlled by the disposition of the case in *Sharpsburg*.

That litigation involved two consolidated cases which sought to determine which of two factions should control the local churches, their property and corporations.²⁸ Title to the property was vested in trustees for the use of the respective local congregations.²⁹

The corporate charters of the local congregations provided for the control and management of the property of the congregations by a board of trustees. The corporations were established under the Maryland General Religious Corporation Law which provided for the election of trustees who would become a body politic and corporate to manage the property of the church or religious society.

The constitution of the General Eldership contained no provisions dealing with the ownership and control of church property.³⁰ The constitution of the Maryland and Virginia Eldership required local church property to be

28. The plaintiffs were the Maryland and Virginia Eldership of the Church of God, a Maryland corporation, several members of the Sharpsburg congregation and its appointed pastor, and two members of the Indian Springs congregation. The defendants were the Church of God at Sharpsburg, Inc., its called pastor, the Indian Springs Church of God, a Maryland corporation, and its acting pastor.

29. Title to the Sharpsburg property would pass to the Maryland and Virginia Eldership if the congregation ceased to exist as a church organization. Title to the Indian Springs sanctuary was vested in trustees with a similar limitation over in favor of the Maryland and Virginia Eldership. Title to its parsonage was in the trustees without any successor estate.

30. The Eldership, however, had passed a resolution recommending that church properties be conveyed to trustees of the local church to be held in trust for the church. It also recommended that clauses be inserted providing for passage of the property to an annual eldership if the church should become extinct or cease to maintain an organization in harmony with the denomination.

conveyed to trustees of local churches with a limitation over in its favor if the church should become extinct.

In duly called and recorded congregational meetings, the majorities in both churches voted to withdraw from the Maryland and Virginia Eldership. The Eldership and the minority members of the congregation refused to accept this action and the Executive Committee of the General Eldership ruled that the withdrawing faction had forfeited all property rights in the local church property.³¹ Litigation was then commenced to enforce this church judgment by preventing the withdrawals and gaining control of the local church property.

The Maryland Court of Appeals held that although civil courts have no power to interfere in spiritual affairs, when property rights are in issue courts must proceed to resolve the particular case in order to preserve definiteness and order in property held by religious corporations. 241 A.2d 691. Such an inquiry requires consideration of the polity of the denomination involved.³²

31. The Maryland court noted that:

"On July 29, 1966, the executive committee of the Administrative Council of the General Eldership gave a 'judgment' that all persons who voted to withdraw from the Maryland and Virginia Eldership have:

" * * * abandoned and forfeited all rights, privileges, properties and offices in the local church and in the Churches of God * * *. In each local church the members who continue to adhere and submit to the doctrines and the policy of the denomination constitute the true congregation. The Executive Committee, as the duly constituted supreme court of the Churches of God, so determine, reaffirming that the presbyterian polity of the Churches of God recognizes no right of secession on the part of congregations affiliated with the denomination * * *." 241 A.2d 691, 694.

32. Generally, there are three types: congregational, presbyterian, and episcopal, with the latter two being roughly considered hierarchical. Many hierarchical churches insert provisions in their constitutions, canon law or other controlling doc-

(Continued on following page)

The Church of God was found to have most of the characteristics of the presbyterian polity. It has annual elderships and a general eldership which governs local congregations. It is similar to The Methodist Church in that it appoints pastors, but it has a congregational polity in regard to local church property. For whatever reason, the denomination does not have any provision in its constitution to control local church property when a schism or withdrawal occurs. A denomination with a presbyterian or episcopal polity easily may make such provisions, but in the absence of such action, local control continues under the law of the state and the applicable property deeds.

The Maryland Court then rejected constitutional challenges to this result. The religious corporation law does not favor one side or the other and does not interfere with free exercise of religion. It merely allows churches to establish corporations to hold property. It does not tell them what kind of polity they must adopt or that they cannot establish control by the denomination in the constitution and bylaws. Neither does this law allow local churches to change the polity of a denomination from presbyterian to congregational. The question is what sort of internal structure has a denomination set up for its own use. Whatever it chooses will be recognized by the state.

As noted above, the Maryland Court of Appeals reviewed its decision upon remand from this Court following the *Hull* decision. In so doing, it exhaustively examined its earlier decision and held that it was strictly

Footnote continued—

uments which provide for denominational control of local church property. These may take different forms. However, a denomination need not adhere strictly to any one of the three forms, but may adopt characteristics of all three. 241 A.2d 691, 698-99.

in accord with the neutral principles approach mentioned in *Hull*. Upon a further appeal this Court dismissed for lack of a substantial federal question. The effect of such a disposition is to affirm the lower court and reject the constitutional challenge presented in the jurisdictional statement.³³ The *Sharpsburg* Court, however, went beyond mere dismissal, and in a brief *per curiam* opinion explained its reasoning:

"Since, however, the Maryland court's resolution of the dispute involved no inquiry into religious doctrine, appellees' motion to dismiss is granted. . ." 396 U.S. 367, 368.

The facts in the instant case are indistinguishable. Petitioners are the minority faction of the local congregation who rely on a church court "judgment". Legal title to the property is in local trustees and a local church corporation. Neither the deeds nor the corporate charter gives PCUS any control over the VPC property. For whatever reason, the PCUS constitution does not provide for control of local church property when withdrawals occur or, for that matter, in any other instance. To the contrary, it provides for trustees or incorporation at the option of the local church and provides that the trustees or corporation shall take their instructions solely from the local congregation. The Georgia courts purposefully have adopted the Maryland approach, have decided the case based on these clearly neutral principles, and have conformed in all respects to the First Amendment.

33. See note 18, *supra*.

IV.

THE APPROACH URGED BY PETITIONERS WOULD OFFEND RATHER THAN PROMOTE FIRST AMENDMENT VALUES. THE GEORGIA APPROACH ON THE OTHER HAND IS COMPLETELY NEUTRAL.

Petitioners seek to persuade this Court to hold that the Constitution mandates a "100 percent deference rule" for the resolution of church property disputes. This is sought to be accomplished in two ways: first, by contending that all such disputes *invariably* involve issues which are "ecclesiastical" and which must be resolved by a church court in order to solve the case [Petitioners' Brief at 31-32]; and second, by arguing that "neutral principles of law" may be used to resolve such disputes *only* in the absence of any "authoritative church court decision" [Petitioners' Brief at 31].

Although this Court has never held that the approach urged by petitioners is mandated by the First Amendment, they nevertheless contend that the only way to uphold First Amendment principles would be to require such a rule. This contention is based on their assertions that the neutral principles approach is "standardless", that it allows civil courts to reject and overrule ecclesiastical decisions, and that it gives them the right to pick and choose between approaches in order to support the doctrinal position of the litigant it supports.³⁴ Quite to

34. Petitioners as much as accuse the lower courts in this case of finding for respondents in order to support the position taken by respondents in whatever underlying doctrinal controversy confronted the parties. This is an utter fabrication. All counsel who were involved in this litigation in the lower courts were very careful not to burden the courts with any doctrinal controversies that might have existed. The Georgia courts had no knowledge as to the respective positions of the litigants concerning any doctrinal questions.

the contrary, however, petitioners' approach would offend First Amendment values and would limit the freedom of denominations to set up whatever method of controlling local church property they desire.

These arguments ignore that this is purely and simply a dispute concerning the use and control of Georgia real estate. The record is completely devoid of any issue as to doctrine, faith, church polity or any other religious issue. In an effort to gloss over this short-coming, petitioners have sought to fabricate a religious controversy by contending that the identity of the "true congregation" of VPC is at stake. This is simply not so as we have pointed out above.

If adopted by this Court, the deference approach urged by petitioners would inevitably become the exclusive approach. Under petitioners' theory, civil courts would be able to use the neutral principles approach only in the absence of a denominational ruling on the subject. They contend that even the pronouncement of an ex parte administrative commission which had no jurisdiction over respondents after the congregation separated, must be abjectly followed. It is perfectly obvious that if such a rule were mandated by this Court, the denomination would always act to uphold the point of view of those local church members who were "loyal" to the denomination, regardless of all other circumstances, because to fail to do so might result in the loss of a local church by the denomination.³⁵

35. Petitioners point to *Sharpsburg* as being a case in which there was not an identifiable hierarchical church court decision to which to defer [Petitioners' Brief at 24]. However, the opinion in that case completely belies this contention. The Executive Committee of the General Eldership which described itself as the "supreme court of the Churches of God" had positively ruled in favor of the loyal minority and had undertaken to forfeit the property rights of the withdrawing faction. See note 31, *supra*.

Petitioners' approach would tend to inhibit the free exercise of religion by stifling dissent and discouraging schisms. See, in this connection, *Maryland and Virginia Eldership v. Church of God*, 241 A.2d 691, 701. All property held by a local congregation would, as a practical matter, be perpetually bound and tied to the established denomination. This is hardly an outcome which a constitutional rule should encourage.

Litigation of this kind has been going on for many, many years. PCUS has necessarily been aware for all of that period of time of the importance of the presence or absence in its Book of Church Order of provisions as to use and control of local church property. The failure to have any such provision prior to May 27, 1973 can only be interpreted as meaning that it was not wanted by the local churches of PCUS. It would be extremely inequitable and unjust if, under these circumstances, an administrative commission should be permitted to supply ex parte and after the fact what was missing on that date by conscious choice.

The reasoning of the Court of Appeals of Maryland in its first consideration of the *Sharpsburg* controversy, 241 A.2d 691, at 701, is very much in point:

"... a denomination with an episcopal or presbyterian polity ... may ... easily prevent the withdrawing congregation from taking with it the local church property if it takes the action we have suggested [provide in its constitution for the control of local church property]. In the absence of such action, the local corporation, which under the law of Maryland and the deeds to the local property controls that property, continues this control. There is no financial loss to the Elderships [the denomination] as it is stipulated

that neither of the Elderships had 'contributed any funds to church property which have not been repaid to them.'"

That is exactly the situation here. It is not contended that PCUS has contributed any funds toward the acquisition or maintenance of the local church property. In view of the complete absence of any provision in the Book of Church Order authorizing it to prevent the congregation of VPC from controlling the local church property, PCUS has neither legal nor equitable standing to complain.

The Georgia approach makes no attempt to interfere with the hierarchical structure or the rules of any denomination. It wisely allows each denomination to determine whether higher levels in the general church shall be given the power to direct the use and control of local church property.

The approach recognizes that there are different types of connectional churches. The fact that a church can be characterized as falling within the group of denominations known as "connectional" has no inherent legal significance as a matter of First Amendment concerns. A denomination can structure itself so that it has features of two, or even all three, of the generally recognized forms. For example, a denomination can have bishops, which is typical of the hierarchical form, and yet simultaneously can have a system whereby local churches have complete control over their property. Neither the Constitution nor the Georgia approach speaks to this problem, and instead each religious body is completely free to set up its own form of government.

The result of the application of the Georgia approach is in no sense predetermined. Local church majorities have lost in United Methodist Church litigation, as illus-

trated by Carnes and by unreported Georgia trial court decisions.³⁶ The difference in result is explainable, of course, by the fact that The United Methodist Church decided many years ago to include in its Discipline very complete provisions dealing with the ownership and control of local church property, whereas PCUS has completely failed to do so.

The object of a civil court formula to resolve these types of disputes should be to "preserve definiteness and order in the holding of church property by religious corporations." *Sharpsburg*, 241 A.2d 691, 697. The Georgia approach does this.

The crux of petitioners' complaint is that the Georgia courts did not devise some way to ensure denominational control of the local church property despite the absence of appropriate provisions in the PCUS constitution. A connectional church can ensure control over local church property (i) by requiring trust clauses in deeds, (ii) by providing in its constitution that all property is held in trust for the benefit of the general church, (iii) by providing for the reversion of local church property in the event of an attempted withdrawal, and (iv) by securing the passage of state statutes to maintain such control. The PCUS did none of these. To the contrary, its constitution provides that the trustees of a local church shall hold, sell, mortgage and otherwise deal with local church property solely at the direction of the local congregation (not a Presbytery, a Commission, a Synod, the General Assembly, or anybody else). PCUS thus had a policy of local control which can be ascertained from its constitution

36. See, e.g., *United Methodist Church v. Sparrow*, No. 6,881 (Superior Ct., Washington Cnty., Ga. 1976); *United Methodist Church v. Doolittle*, No. 1,359 (Superior Ct., Dooley Cnty., Ga. 1974).

under the neutral principles doctrine without engaging in a searching, and impermissible inquiry into church polity.

CONCLUSION

Respondents respectfully submit that the decisions below should be affirmed.

Respectfully submitted,

FRANK C. JONES

GEORGE M. KRYDER, III

2500 Trust Company Tower
Atlanta, Georgia 30303

WALLACE MILLER, JR.

W. WARREN PLOWDEN, JR.

500 First National Bank Building
Macon, Georgia 31201

EDWARD S. SELL, JR.

1414 Georgia Power Building
P. O. Box 1014
Macon, Georgia 31201

Attorneys for Respondents